



Crl.R.C.No.1035 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2026
PRONOUNCED ON : 16.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1035 of 2019

B.U.Muthusami, (M/70),
Son of Urumanda Gounder,
Chairman, Panchayat Union,
Bommanaickenpalalayan,
Kugalur, Gobichettipalayam Taluk,
Erode District.

... Petitioner

Vs.

M.K.M.Dinesh, (M/45) (died),
Son of Meganathan,
Through his Power of Attorney,
V.Rajkumar,
Son of A.K.Venkatachalapathi,
No.11, Kurinji Nagar,
Gobichettipalayam-638 452,
Erode District.

2.D.Kiruthika,
Wife of Late M.K.M.Dinesh.

3.D.Mirunalini,
Daughter of Late M.K.M.Dinesh.

4.Gunasundari,
Wife of Late Meganathan,
Mother Later M.K.M.Dinesh,
All are residing at Door No.12/124B, Amman Nagar,
Erappanaickenpalayam, Bhavani Taluk,
Erode District.

... Respondents



Crl.R.C.No.1035 of 2019

[Sole Respondent Died. R2 to R4 are impleaded on behalf of the deceased R1 as per the order of this Court dated 14.11.2025 in Crl.M.P.No.21565 of 2025 in Crl.R.C.No.1035 of 2019].

PRAYER: Criminal Revision Case is filed under Sections 397 r/w 401 of Code of Criminal Procedure, to set aside the judgment passed in Crl.A.No.56 of 2018 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam dated 03.09.2019 reversing the order of acquittal in the well consider judgment in C.C.No.276 of 2006 on the file of the Judicial Magistrate Court No.I at Gobichettipalayam dated 30.01.2015 by allowing the present criminal revision and set aside the compensation.

For Petitioner : Mr.S.Ananthanarayanan, Senior Counsel
for Mr.MA.P.Thangavel

For Respondents : Mr.A.K.Kumaraswamy, Senior Counsel
for S.Kaithamalai Kumaran

ORDER

The petitioner/accused was acquitted by judgment dated 30.01.2015 in C.C.No.276 of 2006 passed by the learned Judicial Magistrate No.I, Gobichettipalayam (trial Court) on the complaint of the complainant for offence under Section 138 of Negotiable Instruments



Crl.R.C.No.1035 of 2019

Act, 1881. Challenging the same, the complainant preferred an appeal before the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam (lower appellate Court) in Crl.A.No.56 of 2018 and the same was allowed on 30.09.2019 setting aside the judgment of the trial Court and convicting the petitioner for offence under Section 138 of Negotiable Instruments Act, 1881 and sentencing him to undergo one year Simple Imprisonment and to pay a fine of Rs.7,00,000/- as compensation. Aggrieved over the same, the present Criminal Revision Case is filed.

2.During the pendency of this revision, the 1st respondent/complainant died on 11.11.2022, hence, an impleading petition in Crl.M.P.No.21565 of 2025 in Crl.R.C.No.1035 of 2019 filed to subsist the wife, daughter and mother of the 1st respondent/complainant. This Court by order dated 14.11.2025 substituted them in the place of the 1st respondent/complainant.

3.For the sake of convenience and clarity, the petitioner is referred to as accused and the 1st respondent (died) is referred to as complainant.



4.Gist of the case is that the complainant viz., Mr.M.K.M.Dinesh appointed his college friend Mr.V.Rajkumar as Power of Attorney to prosecute the complaint. The accused is a Junior of Power of Attorney's father A.K.Venkatachalapathy. During the first week of January 2006, the accused approached the complainant seeking loan of Rs.7,00,000/- for immediate business and personal expense and promised he would repay the loan within five months and also promised that he would pay interest of 1.5% per month at the end of every month. On the recommendation of the power of attorney Mr.V.Rajkumar, a loan of Rs.7,00,000/- was advanced to the accused on 13.01.2006 at Gobichettipalayam. After the loan, the accused failed to pay the interest and principal as promised. After repeated demand, the accused issued a post dated cheque in No.580209 (Ex.P2) dated 12.05.2006 drawn on Indian Overseas Bank (RMEC), Gobichettipalayam favouring the complainant. When the complainant presented the cheque (Ex.P2) for collection in Corporation Bank, R.M.C. Branch, Gobichettipalayam on 25.05.2006, the same dishonoured on 26.05.2006 for the reason "Insufficient Funds". Thereafter, statutory notice (Ex.P5) issued on 12.06.2006 demanding repayment of the cheque amount and the same received on 14.06.2006. Instead of paying the cheque amount, the accused sent a reply notice dated 05.07.2006 (Ex.P7) making false allegations. Ignoring the same,



the complaint filed before the trial Court. During trial, the power of attorney Mr.V.Rajkumar examined as PW1 and the Principal/complainant examined as PW2 and Exs.P1 to P10 marked. On the side of the defence, the accused examined himself as DW1 and the Bank Manager of Indian Overseas Bank examined as DW2 and Exs.D1 to D4 marked. On conclusion of trial, the trial Court acquitted the accused, in the appeal, the lower appellate Court set aside the acquittal and convicted the accused.

5.Learned Senior Counsel appearing for the accused submitted that in this case, the accused, an Advocate was Junior to Mr.A.K.Venkatachalapathy, the father of the power of attorney Mr.V.Rajkumar. Power of attorney Mr.V.Rajkumar and his Principal Mr.M.K.M.Dinesh are college-day friends. The accused was running a small grocery shop and used to buy rice from Mr.A.K.Venkatachalapathy. There is no dispute with regard to Mr.A.K.Venkatachalapathy running a rice mill. After the demise of Mr.A.K.Venkatachalapathy, it was his son/power of attorney ran the rice mill. The accused used to purchase rice from Mr.A.K.Venkatachalapathy's rice mill and was due of Rs.16,800/- in the year 1998. To reconcile the account, an accommodation cheque issued in the year 1998, later misused and filled up as though it was issued in the year 2006 towards the loan of



Rs.7,00,000/- obtained from the complainant. To prove the cheque issued in the year 1998, the accused entered the witness box and gave explanation. To corroborate the same, the Bank Manager of Indian Overseas Bank examined as DW2, who confirmed that the cheque (Ex.P2) was issued in the year 1998 and the accused had no transactions in his bank account in the preceding years to 2006. He further stated that the accused is one of the earliest customers of the bank, holding Account No.268.

6.Learned Senior Counsel further submitted that in this case, there was misunderstanding between the accused and his senior Mr.A.K.Venkatachalapathy. The accused contested for the post of Chairman of Gobichettipalayam Municipality, backed by a political party and Mr.A.K.Venkatachalapathy actively supported his rival and they were politically opposed to each other. The accused elected as Chairman, hence, hatred and animosity developed between them got intensified and they were not in talking terms. He further submitted that the cheque of the year 1998 misused and deposited in the year 2006, is proved by the evidence of DW2/Bank Manager and through Exs.D1 to D4. In this case, the accused sent a reply notice (Ex.P7) dated 05.07.2006 stating that the complainant is a total stranger and not known to him; the accused as a



Junior joined with Mr.A.K.Venkatachalapathy in the year 1982 and in the year 1996, Mr.A.K.Venkatachalapathy quit the profession and took up rice mill business full time; during the first week of November 1998, the accused to settle the amount issued accommodation cheque; there was political animosity between the accused and his Senior Mr.A.K.Venkatachalapathy in the year 2000. Right from the initial stage, accused's consistent stand is that the cheque (Ex.P2) misused. No rejoinder sent for reply notice (Ex.P7). In the complaint, there was no mention for what reason the reply notice (Ex.P7) not considered.

7.He further submitted that in this case, there are vital contradictions between the evidence of PW1 and PW2. The complainant/PW2, who gave the loan of Rs.7,00,000/-, in his evidence admits that there was no mention of PW1 being present at the time of loan. But PW1 in his evidence gives in detail that at old Door No.6, new Door No.11, Kurinji Nagar, Gobichettipalayam, the loan was given and PW1 was present with PW2 and loan was given at about 01.00 p.m. Further, PW2 admits that Rs.7,00,000/- is a big sum. Though it may not significant to him, lending such huge amount to a person/stranger with whom he has no acquaintance, without collecting any supporting document or in presence of any witness, is highly doubtful. PW2 admits that he



collected Rs.1.5 lakhs from his parents and Rs.5.5 lakhs from others, thereby gave loan, but nothing reflected in the Income Tax Returns (Exs.P8 to P10). Further, PW2 admits that the Income Tax Returns filed after receipt of the reply notice (Ex.P7). PW2 stated that he does not have any movable or immovable properties in his name. Further admits in the Income Tax Return (Ex.P8) for the year 2005-06, his income was Rs.1,99,150/- and in the Income Tax Return (Ex.P9) for the year 2006-07, his income was Rs.2,36,700/-. He took housing loan from LIC for Rs.1 lakhs. Thus, it is clear that PW2 had no wherewithal to give such huge amount of Rs.7,00,000/- as loan in cash. More so when PW2 claims that he is a building contractor running a business in the name of M/s.Miruna Associates, lending Rs.7,00,000/- without any documents is not possible.

8.Learned Senior Counsel further submitted that PW1 admits that there is variation and difference in the ink in signature and writings in cheque (Ex.P2). Thus, the trial Court clearly culled out the relevant evidence of PW1, PW2, DW1 & DW2 along with documents and found the accused probablized his defence and rightly acquitted the accused. On the contrary, the lower Appellate Court, in appeal, reversed the well-reasoned judgment of acquittal on the ground the complainant proved the case and not properly appreciated the presumptions under Sections 118



and 139 of the N.I. Act. In support of his submissions, learned counsel for the complainant relied on the following decisions:

(i) Relied on the decision of the Hon'ble Apex Court in ***G.Pankajakshi Amma and others v. Mathai Mathew (dead) through LRS. and another*** reported in ***(2004) 12 SCC 83*** wherein it had held that no Court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls.

(ii) In ***N.Vijayakumar v. State of Tamil Nadu reported in (2021) 3 SCC 687***, the Hon'ble Apex Court relying upon the decision in ***Chandrappa v. State of Karnataka reported in (2007) 4 SCC 415*** held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

(iii) Placed reliance on the decision of this Court in ***Mrs.Kalavally v. Parthasarathy*** reported in ***2009(1) MWN (Cr.) DCC 45*** wherein it had held that the specific defence taken by the petitioner is that she had not borrowed any amount from the respondent; she had not issued any cheque in favour of the respondent; there was no business transaction



between the petitioner and the respondent.

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(iv) Relied on the decision of this Court in the case of ***M.Palanisamy v. K.Karvannan*** reported in ***2013 (1) MWN (Cr.) DCC 72 (Mad.)*** wherein it had held that the complainant therein has not proved the cheque has been issued by the accused for discharging his legally subsisting liability, since the respondent has not borrowed any money from him.

9. Making the above submissions and relying upon the above decisions, learned Senior Counsel for the accused prayed for setting aside the lower appellate Court judgment confirming the trial Court acquittal.

10. Learned Senior Counsel for the complainant submitted that Ex.P2 is the cheque signed by the accused and his bank account maintained in Indian Overseas Bank (RMEC), Gobichettipalayam is Account No.268. DW2, Senior Bank Manager of the said Bank deposed that the cheque (Ex.P2) issued to the accused through his Bank and the cheque (Ex.P2) was available in the cheque book containing Cheque Nos.580201 to 580210. The accused in his reply notice dated 05.07.2006 (Ex.P7) claims that in the first week of November, 1998, he wanted to



settle dues to his Senior Mr.A.K.Venkatachalapathy, on his request, accommodation cheque gave believing his Senior Mr.A.K.Venkatachalapathy. But DW1 in his evidence gave improvised version as though he issued two cheques, one to Mr.A.K.Venkatachalapathy and another one cheque to Mr.S.K.Subramanian. Further deposed that on compulsion, the accused issued the cheque to Mr.A.K.Venkatachalapathy and claims the cheque was received by Mr.A.K.Venkatachalapathy by coercion. The accused, an Advocate, a member of the Gobichettipalayam Bar Association, and former Chairman of the Gobichettipalayam Municipality, taking such a stand is unbelievable, which exposes the falsity of his defence. The trial Court gave undue importance to failure for sending rejoinder to the reply notice (Ex.P7) and the law does not require such condition.

11.He further submitted that the issue regarding the printed “19” (in the date portion of the cheque), which was struck off and written with “2006”, is blown out of proportion and wrongly projected that no cheque was issued in the year 2006. The Bank Manager DW2 confirmed that the cheque is a valid one and only on the request of the account holder, new cheque leaves will be given. In this case, the accused not operated the bank account from 1998 to 2003, hence, he issued a cheque available



with him for the transaction of the year 2006. The trial Court found the contradiction in the evidence between PW1 and PW2 is only a minor discrepancy and gave undue importance and failed to consider that the accused not denied the issuance of cheque (Ex.P2) and his signature in it. Hence, the statutory presumption under Sections 118 & 139 of N.I. Act comes into play and the accused failed to probabalise his defence and the finding of the trial Court is perverse and unsustainable. The lower appellate Court independently considered the evidence and materials rightly convicted the accused. Hence, the revision to be dismissed confirming the conviction.

12.Considering the submissions of learned Senior Counsels and on perusal of the materials, it is seen that the accused, an Advocate, joined as a junior in the year 1982 with Mr.A.K.Venkatachalapathy, father of the power of attorney holder/PW1. In 1996, Mr.A.K.Venkatachalapathy left legal practice, took up rice mill business as a full-time business. The accused was running a small grocery shop at Kugalur and he used to purchase rice from his senior Mr.A.K.Venkatachalapathy's rice mill. The accused had regular business transaction, and for final settlement of account, an accommodation cheque (Ex.P2) issued. The accused moved away, aligned with a political party, contested for the post of Chairman,



Gobichettipalayam Municipality and succeeded, but the accused's Senior contested the rival political party. Hence, they developed animosity and hatred between them. In this background, it is projected that the accused approached the power of attorney/PW1 for loan of Rs.7,00,000/- for his urgent business needs during January 2006, promised to return the loan within a period of five months and in discharge of the loan dues, issued a post dated cheque (Ex.P2), is doubtful. Further, PW1 and PW2 are college-day friends. PW2 who is in the construction business gave a loan of Rs.7,00,000/- to the accused who is a stranger.

13.The accused and his senior Mr.A.K.Venkatachalapathy belonged to rival political party. PW1 is the son of accused's senior. In this case, there are vital contradictions in the evidence of PW1 & PW2 with regard to date, place and the manner as to how the loan of Rs.7,00,000/- was given which were clearly extracted in the trial Court judgment. Apart from it, whether PW2 had wherewithal to pay such huge amount as loan also discussed. In this case, the Income Tax Returns (Exs.P8 & P9) confirmed that the complainant had no sufficient income to give such huge amount as loan. Added to it, PW2 is a stranger to the accused. PW2, in his evidence, stated that he collected Rs.1.5 lakhs from his parents and mobilised Rs.5.5 lakhs from his friends to advance the loan to



the accused. There is no reference about this fact in the Income Tax Returns. It is to be seen that Rs.7,00,000/- being a substantial amount, accumulation and payment of the same in cash, without any contemporaneous document, is highly doubtful. The trial Court culled extracts the relevant portion of evidence and rightly found PW2 had no wherewithal to lend such huge amount to the accused.

14.As regards the use of cheque (Ex.P2), which was issued in the year 1998 and used in the year 2006, the accused entered the witness box and gave explanation. DW2, the Bank Manager of Indian Overseas Bank confirmed that the cheque book was issued to the accused even prior to the year 2000. Further in this case, PW1 admits that there is ink variance in the signature and writings in the cheque (Ex.P2). Added to it, in Ex.P2, the printed “19” (in the date portion of the cheque) was struck off and written as “2006”. It is not the first time in defence, these facts were raised by the accused during trial. The accused, right from the initial stage, in his reply notice (Ex.P7) raised his objection and defence. Considering all these aspects, the trial Court rightly rendered a judgment of acquittal acquitted the accused. The lower appellate Court not considered these facts and shoved the evidence available by stating that the contradiction in the evidence of PW1 and PW2 is a minor



contradiction. Further it had not referred to any of the exhibits, more particularly Exs.P8 to P10 which are the vital documents and failed to see the admission by PW2 that he had no property both movable and immovable and having limited income and the accused is a total stranger to him. These facts will got to prove PW2 is a person with no wherewithal.

15.In view of the above, this Court comes to the conclusion that the complainant failed to prove the case beyond all reasonable doubt and the accused probablized his defence by cross examination and by defence witnesses and exhibits, which was rightly considered by the trial Court. On the other hand, the judgment of the lower appellate Court is perverse, unsustainable. The Hon'ble Apex Court in the case of ***Chandrappa v. State of Karnataka*** reported in ***(2007) 4 SCC 415*** laid down the principles that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

16.In the result, this Criminal Revision Case stands allowed. The judgment dated 03.09.2019 in Crl.A.No.56 of 2018 passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam is



Crl.R.C.No.1035 of 2019

set aside and the judgment dated 30.01.2015 in C.C.No.276 of 2006 passed by the learned Judicial Magistrate No.I, Gobichettipalayam is restored and confirmed. The petitioner is acquitted from the charges.

16.04.2026

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

- 1.The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.
- 2.The Judicial Magistrate No.I,
Gobichettipalayam.



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Crl.R.C.No.1035 of 2019

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER IN
Crl.R.C.No.1035 of 2019

16.04.2026